JUN 21 1976

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1386

JOHN G. HADLEY,
APPELLANT,

V.

THE STATE OF NEW HAMPSHIRE,
APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

MOTION TO DISMISS OR AFFIRM

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Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of New Hampshire on the ground that it is manifest that the questions presented are so unsubstantial as not to warrant further argument.

I. STATEMENT OF THE FACTS AND PROCEEDINGS BELOW.

This appeal involves the constitutional challenge on equal protection grounds of New Hampshire RSA 249:51 (Supp. 1975), Spillage of Material.

A. The Facts

On the morning of September 25, 1974, the Appellant, John G. Hadley, was operating a ten wheel dump truck on Route 202, Hancock, New Hampshire. Appellant was hauling gravel at a rate of speed of thirty-eight (38) miles per hour without having a top or cover on the load. A New Hampshire State Trooper stopped the Appellant and issued him a citation for being in violation of New Hampshire RSA 249:51 (Supp. 1975). That statute, which is designed to prohibit spillage of materials onto State highways, provides that it shall be a violation for any person to operate a vehicle upon a highway at a speed in excess of thirty (30) miles per hour if any particulate load is not securely

fastened or covered. The statute applies to all vehicles except highway building equipment within construction zones, State and municipal highway maintenance equipment, and local farm equipment where operation of such equipment involves mere incidental use of the public highways.

B. The Proceedings Below

The Appellant appeared before the Peterborough, New Hampshire District Court on October 21, 1974, in answer to the complaint alleging a violation of New Hampshire RSA 249:51 (Supp. 1975). At the close of the State's case, the Appellant entered a Motion to Dismiss the complaint on the ground that New Hampshire RSA 249:51 (Supp. 1975) violated Appellant's guarantee to the equal protection of the laws under the Fourteenth Amendment of the United States Constitution. The District Court, Brighton, P.J., transferred the constitutional question to the New Hampshire Supreme

Court pursuant to New Hampshire RSA 502-A:17-a (Supp. 1975). On September 30, 1975, the New Hampshire Supreme Court held in a unanimous opinion that the challenged statute was constitutional and remanded the case to the Peterborough District Court. State of New Hampshire vs. John G. Hadley, 115 N.H. ____, 345 A.2d 160 (1975). (See Appendix A of Jurisdictional Statement of Appellant.)

On December 10, 1975, the Appellant filed his Notice of Appeal to the Supreme Court of the United States. The case was docketed on March 29, 1976, and Appellant thereafter filed the required Jurisdictional Statement.

II. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

A. Constitutional Provisions

Constitution of the United States, Amendment XIV §1 (in pertinent part):

> " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B. Statutory Provisions

New Hampshire RSA 249:51 (Supp. 1975):

> "249:51 [New] Spillage of Material.
>
> I. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.
>
> II. No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said

"covering or load from becoming loose, detached or in any manner a hazard to other users of the highway. Without limiting the foregoing provision, no person shall operate on any highway any open vehicle loaded with earth, sand, asphalt, stone, gravel or other particulate substance unless said vehicle is equipped with and said load is covered and secured by a close-fitting tarpaulin which prevents the escape of any substance from said load onto the highway. [Amended 1973, 573:1, eff. Nov. 2, 1973.]

III. Any person who violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. Any person shall be liable to the state or town for any damage done to the highway by spillage. [Amended 1973, 530:32, eff. at 11:59 P.M., Oct. 31, 1973.]

IV. The provisions of paragraphs I, II, and III of this section shall not apply to a local farmer transporting his own farm products or materials incidental to his farming operations where such transporting requires incidental use of a public highway provided that such farmer shall not thereby be relieved of his duty to exercise reasonable care in carrying on such operations.

"V. The provisions of paragraph II shall not apply to:

(a) The operation of highway building equipment as defined in RSA 259:1, Xii and motor vehicles used in the construction of highways provided that such equipment or motor vehicle is used within a highway construction zone as prescribed by the commissioner, public works and highways, provided that the operator of any such vehicle shall not thereby be relieved of his duty to exercise reasonable care.

(b) The operation of municipal and state highway maintenance equipment.

(c) The operation of any vehicle on a highway at speeds of less than thirty miles per hour. [Added 1973, 573:2, eff. Nov. 2, 1973.]"

New Hampshire RSA 502-A:17-a (Supp. 1975):

"502-A:17-a Transfers to Supreme Court.

In any criminal case or civil cause in any district court questions of law may be transferred to the supreme court in the same manner as that from the superior court under RSA 491:17, provided that the district court justice hearing the case to be transferred shall, if either party request it, file as a part of the transferred case his findings in writing, stating the facts found and his rulings of law."

III. ARGUMENT

THE QUESTIONS PRESENTED BY THIS APPEAL ARE SO UNSUBSTANTIAL AS NOT TO WARRANT FURTHER ARGUMENT.

The Appellant (Defendant below) seeks to invoke the jurisdiction of this Court under 28 U.S.C. §1257(2) to review the decision of the New Hampshire Supreme Court in which that Court sustained the constitutionality of New Hampshire RSA 249:51 (Supp. 1975). State of New Hampshire vs. John G. Hadley, 115 N.H. ____, 345 A.2d 160 (1975). (See Appendix A of Appellant's Jurisdictional Statement.) The New Hampshire Supreme Court's decision was based primarily on the ground that the activities exempted from regulation by the challenged statute involve less danger and would bear a greater burden if subjected to regulation than traffic in general. The Court concluded that the statute's classifications are both reasonable and rationally related to the legitimate State objective of building and maintaining safe highways.

The decision of the New Hampshire Supreme Court is plainly correct. The challenged statute's purpose is to promote highway safety by prohibiting the spillage of materials onto State highways. The statute accomplishes this end by prohibiting the operators of all vehicles from allowing their loads to leak or drop onto State highways, but vehicles travelling in excess of thirty (30) miles per hour are subject to the additional requirement that their loads be covered. Three classes of vehicles are exempted from this additional load covering requirement: (1) highway building equipment operating within construction zones; (2) State and municipal highway maintenance equipment; and (3) local farm equipment where operation of such equipment involves mere incidental use of the public highways. The New Hampshire Supreme Court correctly held that the challenged statute satisfies the command of the

the Fourteenth Amendment because, the Court ruled, the State Legislature could reasonably find that the three exempted activities involve less danger and would bear a greater burden if subjected to the load-covering regulation than traffic in general.

New Hampshire RSA 249:51 (Supp. 1975) concerns highway safety regulations and does not involve any recognized fundamental right (see Shapiro vs. Thompson, 394 U.S. 618 (1969)) or suspect classification (see Reed vs. Reed, 404 U.S. 71 (1971)). When the infringement of a fundamental right or the application of some suspect classification is absent, the constitutional standard to be applied is the so-called "reasonableness" test. See, e.g., Morey vs. Doud, 354 U.S. 457 (1957). That is, the Fourteenth Amendment requires that when a law creates classifications, those classifications must not be capricious or arbitrary, but must be reasonable and must

have a rational basis. Further, there must exist some reasonable relationship between the purpose of the statute and the classifications which it creates. See, e.g., Morey vs. Doud, supra. The burden of showing that statutory classifications are unreasonable rests on the party assailing the law. Morey vs. Doud, supra.

When tested by the reasonableness standard, it is patently clear that the classifications created by New Hampshire RSA 249:51 (Supp. 1975) comport with the equal protection guarantee of the Fourteenth Amendment. The exemption for local farmers is eminently reasonable for, as the New Hampshire Supreme Court recognized, the State Legislature could rationally conclude that local farming activity creates significantly less danger than other traffic and that requiring a farmer to cover his load each time he incidentally uses a highway would impose a burden materially greater than that imposed on other operators.

The exemption for highway construction equipment is also reasonable for not only would it be extraordinarily burdensome to require such vehicles to be covered every time they moved within a construction zone, but within such zones motorists receive special notice of potential hazards and ordinarily are required to reduce their speedy, thereby reducing the dangers against which the statute guards. Finally, the New Hampshire Supreme Court ruled that the reasonableness of the exemption for State and municipal highway maintenance equipment rests on considerations of the nature of the work and the opportunity for administrative control. Maintenance work requires frequent short trips which would materially increase the burden of covering a load in comparison to other operators, and the State Legislature could reasonably find that public operators are more likely to exercise reasonable care with respect to their loads since they are subject to administrative

control while private operators are not. In sum, the classifications in New Hampshire RSA 249:51 (Supp. 1975) are narrowly drawn, reasonable, and rationally related to the legitimate State objective of building and maintaining safe highways.

The leading cases regarding highway safety classifications, Sproles vs. Binford, 286 U.S. 374 (1932), and Aero Transit Co. vs. Georgia Public Service Commission, 295 U.S. 285 (1935), lend strong support to the decision of the New Hampshire Supreme Court in the instant case. In Sproles, the Court sustained a Texas statute which exempted from general limitations on vehicle size "implements of husbandry" and "highway building and maintenance machinery temporarily propelled or moved upon the public highways." Sproles, supra, at 392. The Court relied on the fact that "the movement [of such vehicles] would be relatively temporary and infrequent as compared with the ordinary

uses of the highways by motor trucks." Sproles, supra, at 392. Similarly, in Aero Transit Co., the Court indicated that the validity of exceptions of safety regulations would depend on such considerations as "the extent or regularity of the traffic thus expected." Aero Transit Co., supra, at 293. Finally, although Sproles and Aero Transit Co. do not directly control in the instance of the exemption concerning state and municipal highway maintenance vehicles, this classification finds support in a line of state cases which sustain exemptions of public vehicles from weight limits. Department of Public Safety vs. Freeman Ready-Mix Co., 292 Ala. 380, 295 So.2d 242 (1974); Alexander vs. State, 228 Ga. 179, 184 S.E.2d 450 (1971); and State vs. Seraphine, 266 Wis. 118, 62 N.W.2d 403 (1954).

Sproles and Aero Transit Co. are still good law, and there has been no significant

conflict in court opinions regarding the relationship between highway safety classifications and the equal protection clause of the Fourteenth Amendment since Sproles was decided in 1932. Appellant presents no cogent reason why the Court should rethink this relationship now. The State of New Hampshire submits that the decision of the New Hampshire Supreme Court directly squares with Sproles and its progeny and is, therefore, plainly correct.

IV. CONCLUSION

Appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the New Hampshire Supreme Court.

Respectfully submitted,

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